

Jeffrey L. Hartman, Esq., #1607
HARTMAN & HARTMAN
510 West Plumb Lane, Suite B
Reno, Nevada 89509
Telephone: (775) 324-2800
Fax: (775) 324-1818
notices@bankruptcyreno.com

Attorney for Jeri Coppa-Knudson, Trustee

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

IN RE: CASE NO. BK-N-14-50331-BTB
CHAPTER 7
AT EMERALD,
Debtor.

JERI COPPA-KNUDSON, TRUSTEE
FOR THE CHAPTER 7 ESTATE OF AT
EMERALD, LLC,

Adv. No. _____

COMPLAINT

Plaintiff,

vs.

KENMARK VENTURES, LLC,
MILLER MORTON CAILLAT &
NEVIS LLP,

Defendants.

Jeri Coppa-Knudson, chapter 7 trustee for the estate of AT Emerald, LLC, Plaintiff
in this proceeding, as and for her complaint against Defendants Kenmark Ventures, LLC,
and Miller, Morton, Caillat & Nevis, LLP, alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C.
§§ 1334 and 157(a), and Local Rule 1001(b)(1). Venue is proper in this Court by reason of

1 28 U.S.C. § 1409.

2 2. This is a core matter pursuant to 28 U.S.C. § 157(b)(2)(H).

3 3. In accordance with F.R.Bankr.P. 7008 and LR 7008, Plaintiff consents to the
4 entry by this Court of a final order or judgment.

5 **PARTIES**

6 4. Plaintiff is the duly appointed and acting chapter 7 trustee for the estate of AT
7 Emerald, LLC (“AT Emerald”). Pursuant to 11 U.S.C. § 323, Plaintiff is the representative
8 of the estate and has the capacity to sue and be sued.

9 5. Plaintiff is informed and believes and thereon alleges that Kenmark Ventures,
10 LLC (“Defendant Kenmark”), is a California limited liability company.

11 6. Plaintiff is informed and believes and thereon alleges that Miller, Morton, Caillat
12 & Nevis (“Miller Morton”) is a California limited liability partnership.

13 **FACTUAL ALLEGATIONS**

14 7. On or about October 25, 2007, Electronic Plastics, LLC and Anthony Thomas
15 (“Thomas”) executed a secured Demand Note in the amount of \$3,000,000 (“Kenmark
16 Note”) payable to Defendant Kenmark. The Kenmark Note was executed by Tony Thomas
17 as the manager of Electronic Plastics, LLC and in his individual capacity. A copy of the
18 Kenmark Note is attached as an Exhibit to Proof of Claim 7-1 filed in the underlying chapter
19 7 case by Defendant Kenmark on June 12, 2014. AT Emerald was not named as a Maker
20 and the Kenmark Note was not executed by anyone purporting to act on behalf of AT
21 Emerald.

22 8. On or about October 25, 2007, Anthony Thomas as Maker, executed a Security
23 Agreement (“Kenmark Security Agreement”) in favor of Defendant Kenmark. The
24 collateral under the Kenmark Security Agreement was purportedly an uncut emerald
25 weighing more than 21,000 karats then “in the possession of Shawn Milligan, who is an
26 agent of the Secured Party”. The Kenmark Security Agreement was executed by Tony
27 Thomas individually as the Maker and by Kenneth S. Tiersini in his capacity as Manager of
28 Defendant Kenmark. A copy of the Kenmark Security Agreement is attached as an Exhibit

1 to Proof of Claim 7-1 filed in the underlying chapter 7 case by Defendant Kenmark on June
2 12, 2014. AT Emerald was not named as a Maker and the Kenmark Security Agreement
3 Note was not executed any anyone purporting to act on behalf of AT Emerald.

4 9. Subsequently, Electronic Plastics, LLC and Thomas defaulted on the obligation
5 represented by the Kenmark Note and Defendant Kenmark filed a civil action against
6 Thomas individually in the Superior Court, State Of California, In And For The County Of
7 Santa Clara, case 1-08-CV-130677 ("Kenmark Civil Action"). Defendant Kenmark did not
8 name AT Emerald as a defendant in the Kenmark Civil Action.

9 10. On or about July 20, 2009, Thomas and AT Emerald, LLC ("AT Emerald") filed
10 a cross complaint against Kenmark.

11 11. On August 17, 2009, Kenmark filed a cross complaint against AT Emerald for
12 declaratory relief. On August 24, 2009, AT Emerald filed an answer to the cross complaint
13 filed by Kenmark.

14 12. On October 5, 2011, after two days of trial, the parties in the Kenmark Civil
15 Action entered into settlement discussions with presiding Judge Leslie Nichols. The terms
16 of the resulting settlement agreement ("Settlement Agreement") were recited in record and
17 agreed to by the parties. A copy of the transcript of the proceedings is attached as an exhibit
18 to Proof of Claim 7-1 filed in the underlying chapter 7 case by Defendant Kenmark on June
19 12, 2014.

20 13. Under paragraph three of the Settlement Agreement, Defendants were required
21 to pay Defendant Kenmark a total of \$5,000,000 with the first installment of \$500,000 to be
22 paid on or before January 1, 2013.

23 14. Under the terms of the Settlement Agreement as recited on the record before
24 Judge Nichols, Anthony Thomas purported to bind AT Emerald for an obligation owed by
25 him individually and by Electronic Plastics, LLC.

26 15. In January 2014, Defendant Kenmark, by and through its legal counsel,
27 Defendant Miller, Morton, Caillat & Nevis, prepared a Stipulation For Judgment And
28 [Proposed] Judgment ("Stipulation For Judgment"). A copy of the Stipulation For Judgment

1 And [Proposed] Judgment is attached as Exhibit E to Proof of Claim 7-1 filed in the
2 underlying chapter 7 case by Defendant Kenmark on June 12, 2014.

3 16. The Stipulated Judgment recites, *inter alia*, that :

4 Whereas, the Settlement, among other things, required Defendants Thomas
5 and Gardner, jointly and severally to pay Kenmark a total of \$5,000,000, ...
6 and

7 Whereas, the Settlement provides that upon the failure of Defendant's
8 Thomas and Gardner to pay any settlement payment , Kenmark may obtain
9 entry of judgment against Defendants Thomas and Gardner, jointly and
10 severally, on Kenmark's Fourth Cause of Action for Fraud and Fifth Cause of
11 Action for Fraud, ... and

12 Whereas, Defendant Thomas has promised to pay \$575,000 toward the
13 stipulated settlement amount on or before January 30, 2014.

14 17. Kenmark's Fourth Cause of Action was for Fraud - Intentional
15 Misrepresentation against Thomas, Electronic Plastics and Michael Gardiner. Kenmark's
16 Fifth Cause of Action was for Fraud - Misrepresentation and Suppression Of Facts against
17 Thomas, Electronic Plastics and Michael Gardiner.

18 18. The [Proposed] Stipulated Judgment was executed in January 2014 by Kenneth
19 Tiersini as managing member of Defendant Kenmark and by Anthony Thomas individually.

20 19. The Stipulated Judgment fails to includes any reference whatsoever to AT
21 Emerald.

22 20. The Stipulated Judgment was approved by the Superior Court and entered on
23 October 8, 2015.

24 21. On or about January 18, 2013, John Beach, as trustee of the Beach Living Trust
25 (the "Beach Trust"), caused \$500,000 to be wired ("Beach Transfer") to AT Emerald's
26 Wells Fargo Bank account # *****6516 ("Account 6516").

27 22. That same day, January 18, 2013, Anthony Thomas issued check no. 1001 on
28 Account 6516 in the amount of \$500,000 payable to Defendant Kenmark Ventures, LLC and
29 Defendant Miller, Morton, Caillat & Nevis, LLP. Check no. 1001 was subsequently
30 deposited into an account owned by Defendant Miller, Morton, Caillat & Nevis, LLP.

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23. Plaintiff is informed and believes and thereon alleges that AT Emerald did not receive, nor did it benefit from, the monies originally loaned by Defendant Kenmark to Electronic Plastics, LLC and Anthony Thomas under the terms of the Kenmark Note.

24. Plaintiff is informed and believes and thereon alleges that there is no enforceable judgment against AT Emerald because Kenmark failed to include AT Emerald as a judgment debtor in the Stipulated Judgment.

25. Anthony Thomas and Wendi Thomas filed their individual chapter 11 petition on March 4, 2014. The chapter 11 was converted to chapter 7 on August 29, 2014.

26. AT Emerald filed its chapter 11 petition on March 4, 2014. The chapter 11 case was converted to chapter 7 on August 29, 2014.

FIRST CLAIM FOR RELIEF

11 U.S.C. § 548(a)(1)(A)

27. Plaintiff repeats and realleges paragraphs 1 through 26 as though fully stated herein.

28. Plaintiff is informed and believes and thereon alleges that in January 2013, AT Emerald was insolvent.

29. The Trustee is informed and believes and thereon alleges that the transfer of \$500,000 to Defendants Kenmark Ventures, LLC, and Miller, Morton, Caillat & Nevis, LLP was for the benefit of an insider, Anthony Thomas, and was done with the actual intent to hinder, delay and defraud creditors, including the Beach Trust.

SECOND CLAIM FOR RELIEF

11 U.S.C. § 548(a)(1)(B)

30. Plaintiff repeats and realleges paragraphs 1 through 26 as though fully stated herein.

31. Plaintiff is informed and believes and thereon alleges that in January 2013, AT Emerald was insolvent.

32. The Stipulated Judgment executed in January 2014 by Kenmark's representative Kenneth Tersini recites:

1 If payment of \$550,000 is not received by Kenmark on or before January 30,
2 2014, judgment shall hereby be entered in favor of Plaintiff Kenmark
3 Ventures, LLC against Defendants Anthony Thomas jointly and severally
4 with Defendant Michael Gardner [sic], on Kenmark's Fourth Cause of Action
for Fraud and Fifth Cause of Action for Fraud in the principal sum of
\$4,500,000 (four million five hundred thousand dollars) together with interest
in the judgment thereafter at the rate of 10% per annum as provided by law.

5 33. The Trustee is informed and believes and thereon alleges that the transfer of
6 \$500,000 from AT Emerald's account to Defendants Kenmark Ventures, LLC, and Miller,
7 Morton, Caillat & Nevis, LLP, was made for less than a reasonably equivalent value in
8 exchange for the transfer.

9 34. The Trustee is informed and believes and thereon alleges that AT Emerald
10 became insolvent as a result of the transfer of \$500,000 to Defendants Kenmark Ventures,
11 LLC, and Miller, Morton, Caillat & Nevis, LLP.

12 35. The Trustee is informed and believes and thereon alleges that AT Emerald was
13 engaged in business for which any property remaining with AT Emerald was an
14 unreasonably small capital.

15 36. The Trustee is informed and believes and thereon alleges that the transfer of
16 \$500,000 to Defendants Kenmark Ventures, LLC, and Miller, Morton, Caillat & Nevis, LLP
17 was for the benefit of an insider, Anthony Thomas.

18 **THIRD CLAIM FOR RELIEF**

19 11 U.S.C. § 550

20 37. Plaintiff repeats and realleges paragraphs 1 through 36 as though fully stated
21 herein

22 38. If the Court avoids the transfer of \$500,000 to Defendants Kenmark Ventures,
23 LLC, and Miller, Morton, Caillat & Nevis, LLP she is entitled to recover the \$500,000 from
24 the Defendants or from any immediate or mediate transferee of Defendants according to
25 proof.

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